



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON, D.C. 20370-5100

BJG
Docket No: 5811-98
20 November 2000

Mr. [REDACTED]
[REDACTED]
[REDACTED]

Dear [REDACTED]:

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

It is noted that the Commandant of the Marine Corps (CMC) has directed removal of your fitness reports for 22 September 1993 to 28 February 1994 and 1 March to 5 November 1994. Your summary court-martial (SCM) of 10 August 1994 was reviewed for clemency only, as the Board for Correction of Naval records does not have authority to remove it.

A three-member panel of the Board, sitting in executive session, considered your application on 16 November 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the report of the Headquarters Marine Corps (HQMC) Performance Evaluation Review Board (PERB), dated 5 August 1998 with enclosure, the advisory opinion from the HQMC Military Law Branch (JAM3), dated 16 July 1998, the memorandum for the record (MFR) dated 26 January 1999, and the advisory opinion from the HQMC Manpower Equal Opportunity Branch, Manpower Plans and Policy Division (MPE), dated 10 February 1999, copies of which are attached. They also considered your counsel's letter dated 18 September 1998 with enclosure. Finally, they considered the naval record of your first sergeant during the pertinent period.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. In this connection, the Board substantially concurred with the comments contained in the advisory opinions from JAM3 and MPE in finding that your contested nonjudicial punishment (NJP) of 21 September 1994 should stand, and that no relief regarding your SCM was warranted. They were unable to find that you were never counseled about "off-

duty distractions" cited by your reviewing officer in the removed report for 1 March to 5 November 1994, so they could not find your contested NJP cited in that report was "premature and unwarranted." Finally, having reviewed your first sergeant's record, they found no evidence of racial bias on his part.

Since the MFR shows that you were not selected by a remedial promotion board with a corrected fitness report record, the Board found that you would have failed of selection, even if your record had not included the contested fitness reports. For this reason, they found your request to show you did not fail of selection for promotion to staff sergeant should be denied.

In view of the above, your application for relief beyond that effected by CMC has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director

Enclosures

Copy to:
Charles W. Gittins, Esq.



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
2 NAVY ANNEX
WASHINGTON, DC 20380-1775

5811-98
A05
IN REPLY REFER TO:

1610

MMER

5 Aug 98

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: BCNR APPLICATION IN THE CASE OF SERGEANT [REDACTED]
[REDACTED] USMC

Encl: (1) Copy of CMC ltr 1610 MMER/PERB of 5 Aug 98
(2) SJA to CMC Comment 5300 JAM3 of 16 Jul 98

1. As evidenced by enclosure (1), PERB removed from Sergeant [REDACTED] official military record, the fitness reports for the periods 930922 to 940228 (AN) and 940301 to 941105 (TR).

2. We defer to BCNR on Sergeant [REDACTED] request for elimination of information relative to the Summary Court-Martial. Enclosure (2) is furnished to assist in resolving that matter.

[REDACTED]
Head, Performance Evaluation
Review Branch
Personnel Management Division
By direction of the Commandant
of the Marine Corps

5811-48



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
2 NAVY ANNEX
WASHINGTON, D.C. 20380-1775

IN REPLY REFER TO:
1610
MMER/PERB
5 Aug 98

From: Commandant of the Marine Corps
To: Sergeant [REDACTED] USMC
1610 [REDACTED]

Subj: CORRECTION OF NAVAL RECORD

Ref: (a) MCO 1610.11B
(b) MCO P1400.32B (Chapter 3)

1. Per reference (a), the Performance Evaluation Review Board has reviewed allegations of error and injustice in your Naval record. Having reviewed all the facts of record, the Board has directed that your Naval record will be corrected by removing therefrom the following fitness report:

<u>Date of Report</u>	<u>Reporting Senior</u>	<u>Period of Report</u>
9 Mar 94	[REDACTED]	930922 to 940228 (AN)
3 Nov 94	[REDACTED]	940301 to 941105 (TR)


2. There will be inserted in your Naval record a memorandum in place of the removed report containing appropriate identifying data concerning said report. The memorandum will state that the report has been removed by order of the Commandant of the Marine Corps and may not be made available to selection boards and other reviewing authorities; that such boards may not conjecture or draw any inference as to the nature of the report. The Automated Fitness Report System will be corrected accordingly.

3. If you believe the fitness report identified in paragraph 1 above adversely affected your consideration by a regularly convened selection board, your proper recourse is to inquire with the Enlisted Promotion Section (MMPR-2) as to your eligibility for remedial promotion consideration under the provisions of reference (b).

Enclosure (1)

Subj: CORRECTION OF NAVAL RECORD

4. Since the remainder of your requests do not fall under the purview of this Headquarters, your case is being forwarded to the Board for Correction of Naval Records (BCNR) for final resolution. Further inquiries should be made directly to that agency.


By direction

Copy to:



Enclosure (1)

5300
JAM3
16 JUL 1998

SJA TO CMC COMMENT on MMER r/s of 3 Jun 98

Subj: PERFORMANCE EVALUATION REVIEW BOARD ICO
SERGEANT [REDACTED] USMC

1. Issue. We are asked to review and comment on Sergeant [REDACTED] request to remove two fitness reports from her Official Military Personnel File (OMPF). Our comments are limited to the propriety of the nonjudicial punishment (NJP) and summary court-martial (SCM) that are referenced in the second of two fitness reports Sergeant [REDACTED] challenges.

2. Opinion. For the reasons set forth below, we see no impropriety in either Sergeant [REDACTED] NJP or SCM, and their inclusion in her fitness report for the reporting period 940301 to 941105.

3. Background

a. On 16 August 1994, Sergeant [REDACTED] was convicted at a summary court-martial of being 6 minutes late to post for duty, in violation of Article 86, Uniform Code of Military Justice (UCMJ). She was found not guilty of disobeying a lawful order, in violation of Article 92, UCMJ. Sergeant [REDACTED] was sentenced to forfeit \$100.00 pay per month for 1 month. The convening authority approved the sentence. A judge advocate reviewed the proceedings and found no error. Sergeant [REDACTED] did not appeal to the Judge Advocate General of the Navy under Article 69(b), UCMJ. Sergeant [REDACTED]'s charges were referred to a summary court-martial because she refused to accept NJP.

b. On 21 September 94, Sergeant [REDACTED] received NJP for a 20 minute unauthorized absence, in violation of Article 86, UCMJ. She was sentenced to be reduced to pay grade E-4, and forfeitures of \$150.00 pay per month for 2 months. Both the reduction and the forfeiture were suspended for 6 months and subsequently remitted. Sergeant [REDACTED] did not appeal the NJP.

c. Both Sergeant [REDACTED] SCM and NJP were reflected in her fitness report for that reporting period.

4. Analysis

a. Sergeant [REDACTED] argues that her NJP and SCM were unfair because they were the result of race or gender bias on the part of her unit's first sergeant. She is not contesting,

Enclosure (2)

Subj: PERFORMANCE EVALUATION REVIEW BOARD ICO
SERGEANT [REDACTED] USMC

5. Conclusion. For the reasons stated above, we find no error in Sergeant [REDACTED] NJP or SCM and conclude that they were appropriately included in her performance evaluation for that reporting period.

[REDACTED]

Lieutenant Colonel
U.S. Marine Corps
Head, Military Law Branch
By direction of the
Commandant of the Marine Corps

MEMORANDUM FOR THE RECORD

BOARD FOR CORRECTION OF NAVAL RECORDS (BCNR)
PERFORMANCE SECTION
2 NAVY ANNEX, SUITE 2432
WASHINGTON, DC 20370-5100
TELEPHONE: DSN 224-9842 OR COMM (703) 614-9842
FAX: DSN 224-9857 OR COMM (703) 614-9857
E-MAIL: [REDACTED]@HQ.NAVY.MIL

DATE: 26JAN99

DOCKET NO: [REDACTED]

PET: EX-8 [REDACTED]

PARTY CALLED: PET

TELEPHONE NO: N/A

WHAT PARTY SAID: PET INFORMED ME THAT BASED ON THE REMOVAL OF
HER TWO CONTESTED FITREPS BY THE PERB, SHE REQUESTED A REM SEL BD
FOR SSGT FROM MMPR-2, BUT WAS NOT SELECTED FOR PROM.

[REDACTED]

IN REPLY REFER TO:
5354
MPE
10 Feb 99

Head, Manpower
Equal Opportunity Branch
Manpower Plans and Policy
Division